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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/977,243	10/16/2001	Peter F. Reile	FSHR-042/00US 063518-2286	2235
22903 7590 01/21/2009 COOLEY GODWARD KRONISH LLP ATTN: PATENT GROUP Suite 1100 777 - 6th Street, NW WASHINGTON, DC 20001				
EXAMINER				
DEODHAR, OMKAR A				
ART UNIT		PAPER NUMBER		
3714				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

09/977,243

Applicant(s)

REILE ET AL.

Examiner

OMKAR A. DEODHAR

Art Unit

3714

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 March 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19, 21-28, 31-41, 43-55 and 57-66 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-19, 21-28, 31-41, 43-55, 57-66 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____
- Paper No(s)/Mail Date _____

DETAILED ACTION

Final Rejection

Remarks

This is responsive to Applicant's claim amendments dated 3/27/2008. The Office action dated 6/26/2008 is hereby withdrawn & replaced with the instant Office action. The grounds of rejection & prior art applied against the claims remain unchanged.

Response to Arguments

Applicant's arguments filed 03/27/2008 have been fully considered but they are not persuasive.

Applicant argues that the prior art fails to teach a second interactive tools being one of activated or inactivated based on the selection of said one of said plurality of activities as in claim 1. Examiner respectfully disagrees. The claim language does not require a tool being inactivated. It only requires a tool being **one of activated or inactivated**. Since Hainey II teaches that when a player selects an icon, additional menus or second interactive tools become available for selection from the selection of the first icon [0035], this satisfies the claimed "**one of activated or inactivated**". This is incorporated into the rejection below.

Applicant argues the prior art does not teach at least one of said plurality of interactive tools being a full screen erase tool. Examiner respectfully disagrees. In the rejection of claim 10, below, Examiner has provided a screen shot of "clear image function", which can be utilized by pressing the Ctrl+Shift+N keys simultaneously which erases the entire screen. This is incorporated into the rejection below.

Regarding arguments drawn to amended claim 22, Hainey II teaches that the memory cartridges can add additional lessons for the user to select (second activity applications) when additional memory cartridges are inserted [0031]. Given that Hainey II teaches adding additional lessons via additional memory cartridges to further skills & it does not make sense to attempt advanced lessons before mastering initial lessons, it would be obvious to preclude interactions between different activities in claimed manner. This is well within the level of ordinary skill in the art & yields predictable results as explained in the preceding sentence. This is incorporated into the rejection below.

Regarding arguments towards claims 19, 26, 31 & 32, see the rejection below.

All claims are respectfully rejected.

Claim Rejections - 35 USC § 112

Claims 1, 10, 22, 31 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The claims recite that the toolbar is fixedly disposed on said touch screen, however there is no disclosure in the applicant's specification to support a "fixedly disposed" or "fixed" tool bar on the touch screen. In the spirit of furthering prosecution, the examiner will interpret the limitations as a screen in which the toolbar appears in a general area as that taught by Hainey II.

Claim 64 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which

was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The claim recites that the second activity is a game activity. There is disclosure that games may be played on the handheld device, however they have not been disclosed in such a manner as required by the claims wherein the game is the second activity that is made available or unavailable and dependent on the selection of a first activity.

Claim 1 recites the limitation "said plurality of activities" in which no prior reference to a plurality of activities has been mentioned; drawing activities were mentioned, but it is unclear as to whether applicant is referring to the previously mentioned drawing activities or some different set of activities. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-19, 21-28, 31-41, 43-55 and 57-66 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hailey, II (US 2001/0038999) in view of Microsoft Office Shortcut Bar and Microsoft Paint (copyright 1981-1998 version 4) and further in view of SAMS Teach Yourself Paint Shop Pro 5, Michael T. Clark.

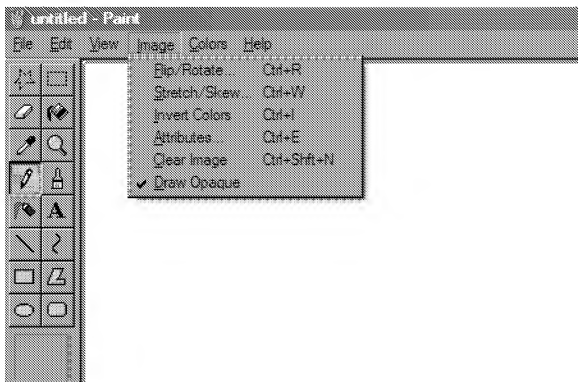
The rejection as stated in the non-final Office action dated 09/28/2007 is retained, modified and incorporated herein.

Regarding the amendments to the claim 1:

Hainey II teaches the use of a touch screen (feature 13, [0035]), the fixedly disposed toolbar, the tool bar of Hainey is "fixedly disposed" in figure 3. Furthermore the tool bar of Microsoft Paint is also fixedly disposed wherein the options and menus are stationary and non-movable. Regarding the limitations of "a plurality of drawing activities displayed on the touch-screen display in response to one of said plurality of activities displayed on the touch-screen being touched", Hainey II teaches the very same limitation in [0035] wherein he states "each icon selected opens a window... providing further options available within the selected category." Regarding the limitation of "said second interactive tool being **one of activated or inactivated** based on the selection of said one of said plurality of activities", this does not require that the second interactive tool is inactivated based on the selection. Since Hainey II teaches that when a player selects an icon, additional menus or second interactive tools become available for selection from the selection of the first icon [0035], this satisfies the claimed "**one of activated or inactivated**".

Regarding the amendments to claim 10:

The full erase tool has been taught by Microsoft Paint in the form of a "clear image function", which can be utilized by pressing the Ctrl+Shift+N keys simultaneously which erases the entire screen. The user may also access the function under the "image" tab at the top.



Therefore it would have been obvious to one of ordinary skill in the art at the time of invention to incorporate the full screen erase function with the drawing system of the prior art in order to allow users to quickly start over on a project without having to close and create a new file.

Regarding the amendments to claim 22:

the second characteristic being configured to interact with the retrieved second activity application from the removable read-only memory cartridge & not the first activity application - given that Hainey II teaches adding additional lessons via additional memory cartridges to further skills & it does not make sense to attempt advanced lessons before mastering initial lessons, it would be obvious to preclude interactions

between different activities in claimed manner. This is well within the level of ordinary skill in the art & yields predictable results as explained in the preceding sentence.

Regarding the amendments to claim 26, the limitations of the starter scene are met by the selection of the image type as discussed in the previous office action which is incorporated herein. The user selects from a plurality of image types (page 44-46 of Clark) wherein corresponding to each image type, the characteristics of an interactive tool on the toolbar is modified (in this case the color wheel) based on the selection of the image type.

Regarding claim 31, the limitations of the cartridge including removable memory are met by Hainey II in feature 18, an external cartridge connector for use with flash memory for plug and play cartridges [0031]. See the discussion of claim 22, above.

Regarding claim 32 & 43, see the discussion regarding the amendments to claim 1, above.

Regarding claims 63 & 64, wherein the second activity is a drawing activity, Hainey II [0035], drawing tools; interpreted also as a gaming activity.

Regarding claim 65, the user selects from a plurality of activities (figure 4 feature 50) from which the user can select an art lesson or a starter scene (figure 4, feature 60).

Regarding claim 66, the prior art is silent regarding the full screen erase function having selectable animated erase options; however it is notoriously well known in the art to allow users to select their animation options and therefore it would have been obvious to one of ordinary skill in the art at the time of invention to allow users to select an animation for which to view while the system erases their screen. For example, with

Microsoft Paint, images are created & stored. It is well within the level of ordinary skill to execute an erase option with Microsoft Paint running in the background while viewing another image in forefront.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to OMKAR A. DEODHAR whose telephone number is (571)272-1647. The examiner can normally be reached on M-F: 8AM - 4:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Vo can be reached on 571-272-4690. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/OAD/

/John M Hotaling II/

Supervisory Patent Examiner, Art Unit 3714